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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218800
Party	Defendant Matosantos Commercial Corp.
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Date	11/21/2014
Attachments	Answer to Opposition.pdf(116607 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

KIMBERLY-CLARK WORLDWIDE,
INC.

Opposer

v.

MATOSANTOS COMMERCIAL
CORP.

Applicant

Opposition No. 91218800

Serial No. 85/901,644

Mark: TENDER PUFF BATHROOM TISSUE
and Design

Filing Date: April 11, 2013

Publication Date: April 15, 2014

ANSWER TO NOTICE OF OPPOSITION

Applicant, Matosantos Commercial Corp., (hereinafter “Matosantos” or “Applicant”), respectfully submits its Answer to Notice of Opposition (hereinafter “Opposition”) filed by Kimberly-Clark Worldwide, Inc. (hereinafter “Kimberly-Clark” or “Opposer”) in the above referenced matter. Applicant denies any averments not expressly admitted and responds to the Opposition as follows:

In response to the opening un-numbered paragraph of the Opposition, Applicant admits upon information supplied by Opposer and belief, that Kimberly-Clark is a Delaware corporation, with its principal place of business at 2300 Winchester Road, Neenah, Wisconsin, 54956. Applicant denies that Kimberly-Clark is or will be damaged by the registration of the mark shown in Application Serial No. 85/901,644 filed on April 11, 2013 in International Class 16, for toilet paper.

In response to the numbered paragraphs of the Opposition, Applicant states as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Opposition, and therefore denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Opposition, and therefore denies the same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Opposition, and therefore denies the same.
4. The allegations made in paragraph 4 of the Opposition are legal conclusions and therefore, do not require a response from Applicant. To the extent a response is needed, Applicant denies the allegations made in paragraph 4.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Opposition, and therefore denies the same.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Opposition, and therefore denies the same.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Opposition, and therefore denies the same.
8. Denied.
9. Denied.

10. Denied.

11. Denied.

12. Denied

13. Denied

14. Denied.

15. Denied.

16. Denied.

In response to the Prayer for Relief, Applicant denies that Opposer is entitled to any form of relief.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts that:

1. The Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the Opposition.
2. Applicant's mark in U.S. Application Serial No. 85/901,644 for **TENDER PUFF BATHROOM TISSUE and design** is inherently distinctive and thus, registrable and protectable under Trademark Law.
3. Applicant's mark **TENDER PUFF BATHROOM TISSUE and design**, when applied to the goods identified in the Application Serial No. 85/901,644, is not likely to cause confusion, mistake or deception with Opposer's trademarks.
4. Applicant's mark in U.S. Application Serial No. 85/901,644 for **TENDER PUFF BATHROOM TISSUE and design** will not cause any harm or damage to Opposer.

5. The current puppy design used in Opposer's U.S Trademark Application No. 86281791 differs substantially from the puppy designs in Opposer's trademarks, U.S. Registration No. 2918076 and 2918077, and therefore is highly diluted as a trademark formative, and hence, weak, and has caused Opposer to lose any exclusive rights over the purported puppy design.
6. Applicant's mark, when analyzed as a whole, is sufficiently distinctively different from Opposer's marks as to avoid confusion, deception or mistake of the source of sponsorship or association of Opposer's goods.
7. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.
8. Applicant's mark, when used on Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.
9. The trademarks at issue contain different literal elements.
10. The trademarks at issue contain different designs.
11. Opposer is not entitled to maintain its Opposition by reason of estoppel.
12. Opposer is not entitled to maintain its Opposition by reason of laches.
13. The Opposition is barred by the equitable doctrine of waiver.
14. Opposer has brought this Opposition for improper purposes and with unclean hands.

15. There is no evidence of actual confusion between Opposer's marks and Applicant's mark.

16. Opposer is illegally expanding the scope of its alleged trademark protection.

17. Opposer maliciously filed the instant action in an attempt to monopolize or restrain trade and in order to harass a legitimate competitor.

Applicant reserves the right to amend or include additional affirmative defenses as the proceedings in this case, particularly as the discovery of evidence, progress.

WHEREFORE, in light of the foregoing, Applicant contends that this Opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer; and Applicant prays that this Opposition be dismissed with prejudice and that Applicant be granted registration of its trademark **TENDER PUFF BATHROOM TISSUE and design**, U.S. Application Serial No. 85/901,644.

RESPECTFULLY SUBMITTED

It is hereby certified that the foregoing "Answer to Notice of Opposition" was served by first class mail, postage prepaid, upon the Opposer's representative: Kathleen E. McCarthy, King & Spalding LLP, 1185 Avenue of the Americas, New York, New York, 10036.

On this 21st day of November 2014.



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